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ABSTRACT

Language is defined here as a means of social control, a viewpoint by which language restrictions can be seen as a method of discriminating against speakers of minority languages. A government designates an official language to restrict access to economic and political power. This view of language is substantiated by an analysis of the United States' experience with official language designation in three areas: the school systems, in which English has been required; the political institutions, which require voting and naturalization processes in English; and economic life, in which many occupations have been open only to citizens. The patterns have been similar, in that they were affected by three historical trends: the initial period of relative tolerance toward the use of other languages (1780-1880), active development and support of English language qualifications in order to exclude (1880 through World War II), and then active questioning and reversal of these official actions. In general, language control has been evidenced in the language restrictions imposed legislatively when an ethnic group was viewed as irreconcilably alien to a prevailing concept of American culture. (LG)

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LANGUAGE AS A MEANS OF SOCIAL CONTROL: THE UNITED STATES EXPERIENCE

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LANGUAGE AS A MEANS OF SOCIAL CONTROL: THE UNITED STATES EXPERIENCE

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INTRODUCTION

The approach to be adopted here is to view language as primarily a means of control rather than as "a means of communication," 1/ "a means of social intercourse," "a societal resource," 2/ or the host of other definitions which come to the fore when language is discussed.

The proposition, language is a form of control, continues the theme struck by researchers who have investigated the purpose of language and speech in children and adults. 3/ Thus, Piaget in answering the question of what is the function of the speech of children, "What are the needs which a child tends to satisfy when he talks?", concludes that it is used to control one's own behavior and mental processes: "it is first and foremost to himself, and that speech, before it can be used to socialize thought, serves to accompany and reinforce individual activity." 4/

Other researchers, relating language and thought, have noted the importance of language in ordering the environment and absorbing information from the world outside.

> One is thus led to believe that, in order for the child to use language as an instrument of thought, he must first bring the world of experience under the control of principles of organization that are in some degree isomorphic with the structural principles of syntax. Without special training in the symbolic representation of experience, the child grows to adulthood still depending in large measure on the enactive and ikontic modes of representing and organizing the world, no matter what language he speaks." 5/

The importance of language in framing and analyzing ikonic messages was carefully experimented with and the results summarized as follows:

> "...when both enactive and verbal messages are saying 'same' and perception alone is signaling a difference, the two win out over the one. Thus it is only when we marshal both enactive and symbolic forces against the ikonic that the ikonic finally gives way. It is when the child is both saying and doing that he learns not to believe fully what he is seeing. Except for the interaction among different modes of representation, learning could not occur." 6/

If language is used by the child to control his environment, to order it and perceive it unambiguously, a number of Soviet researchers pointed out that adults used language to control him:

> "Investigations indicate that...voluntary attention is tightly connected to an increase in the role of linguistic components in regulating the child's activity. These components may occur in the form of verbal instructions from an adult, as well as in the form of linguistic autosignalling, i.e., verbal designation by the child himself of those elements in the situation which require attention during the fulfillment of activities..." 7/

In short, language as a means of control is a vantage point already found to be of considerable utility in studies of childhood development and learning.

This viewpoint also permits problems of multi-cultural and multi-linguistic societies to be analyzed in the same fashion used by political scientists studying federalism and empire; namely, in terms of the distribution of power between the central government and the society's constituent elements. 8/ There are a number of factors involved in the establishment of the federal relationship: military, diplomatic, scientific and economic. And these elements are also key to the evolution, the adaptation, of the federal structure. Language

freedom and language status is one more element of the Federal bargain, the means used by the government to assure a stronger tie to the center or to permit a relaxation of the authority. 9/

It also reflects more accurately the role of language imposition which follows conquest. "Language was ever the fellow of empire and accompanied it everywhere so that together they waxed strong and flourished and together they later fell."10/ This is easily understood when one realizes that its basic purpose was to exclude from access to power those who had not had sufficient contact with the conquerors; to control by exclusion and limitation the dissident population. Frequently language discrimination was tied to religious conflict. One could identify the religion of a person in short order by the language he spoke.

Extending this working definition--language is a means of social control--to socio-linguistics not only takes advantage of the results available from allied disciplines but also results in a number of useful insights.

As may be apparent, this definition raises to a new level of significance governmental actions with respect to language; specifically, official designation usually found in constitutions or statutes. The position put forth here is that the reason for the designation of language is solely to control, to limit access to economic and political life and that the effect over time from both the vantage point of minority language use and status of their speakers is very great. Although official designation has so far been minimized in the literature, if

not totally ignored,11/ it is in my view the most significant act that a government can take with respect to language planning. Growth or diminution of language use relates not only to economic or social contact but to official action in the area.

It is difficult to analyze carefully the effect of official designation. One has to look at the means by which the official designation is carried out through governmental organs (the courts, the legislature), the school system, and in various economic activities. In addition, one has to examine the intent and actual effect upon the non-English speaking. We shall see later in this paper, in looking at the United States experience, the very strong effect official action (expressed in regulations and statutes) has had on non-English language use in the United States and the political and economic condition of the non-English speaking.

This emphasis upon official language designation has the corollary effect of indicating the great capacity to effect deliberate language change in a multinational society. Codification, thus, is not a technical issue dealing with normalization or standardization of variations in grammer or spelling.12/ The ramifications of the legal act go to the heart of the minority's role in the society. The bitter fights against official language designation, especially in the schools, reflects this instinctive awareness by the minority that what is at stake is their role in society and that the consequences will be enormous.

Finally, the approach suggested here does not view language as a continuum so that issues of language, dialect and variations in regional speech patterns become inextricably merged. Rather, I believe that for the purpose of discussing language and its role in a country, one must discuss it in the same way that a government expresses its attitude toward language which is in terms of whole languages. There are now over 30 countries in the world that have expressed a view on language in constitutional documents and at least twice that in statutory expressions and it is always expressed in terms of whole languages. 13/

I shall discuss this thesis by examining the official language practices of the United States. There are advantages and disadvantages in selecting the United States. For one thing,the United States does not have a constitutionally established official language. Official designation occurs by statute or is embodied in the case law at the Federal or state level. As a result official designation, although more difficult to follow, can be effected and changed more readily. We shall follow the evolution of official designation to see when it has taken place, when it has been changed, and the effect that this has had on non-English speakers in the United States.

We shall show that the evolutionary pattern was as follows:

1. From 1789 to 1880 no explicit designation of English as the official language and great tolerance for the use of other languages;

2. From 1880 to 1920 and then continuing until World War II, the official designation of English at the state and Federal level with the clear use of these language requirements to exclude and discriminate against various minorities and immigrant groups; and

3. Since World War II, and especially in the last decade, the relaxation of these requirements and even the encouragement of the use of other languages.

We shall look at language designation in three general areas: (1) the school system, (2) political institutions (citizenship, voting), and (3) the economic life of the country. The significant point to be noted is that language designation in all three areas followed a marked, similar pattern so that it is reasonably clear that one was responding not to the problems specifically related to that area (i.e. educational issues or job requirements in the economic sphere) but to broader problems in the society to which language was but one response. Language designation was almost always coupled with restrictions on the use of other languages in addition to discriminatory legislation and practices in other fields against the minorities who spoke the language, including private indignities of various kinds, which made it clear that the issue was a broader one.

I. The Official Language of the School System

The psycho-linguistic and socio-linguistic tie appears closely in the school system where the controlling effect of language on behavior and the organization of mental processes is greatest. The lack of a normal educational response, drop-outs, relates to the fact that official designation of language indicates to non-speakers that they no longer have control of society and are unlikely to play a significant role within it.

Thus, studies of bilingual education have not shown significant learning differences in reading or mathematics between vernacular and majority language instruction. 14/ The different scholastic effect, if any, from instruction in the vernacular or official language results from the changed child's perspective toward society and this effects significantly his attitude toward school. Thus, Carter, after a thorough review of the problems of the education of the Mexican-American child, says:

> "However, the crucial factor is not the relationship between home and school, but between the minority group and the local society. Future reward in the form of acceptable occupational and social status keeps children in school. Thus, factors such as whether a community is socially open or closed, caste-like or not, discriminatory or not, has restricted or non-restricted roles and statuses for its minority-group segment, become as important as the nature of the curriculum or other factors in the school itself, or perhaps more important." 15/

Moreover, educators have noted the progressively larger divergence in achievement that occurs with age between the Indian child and white child who start out at the beginning of the school approximately equal in achievement tests.

Some have noted a serious gap at the fifth grade and then at college entrance when not only language skills are becoming increasingly important. At these junctures, there are period of conscious awakening of social differences leading to alienation and withdrawal. 16/ Analysis of the causes of Indian failure in schools has increasingly focussed on isolation, alienation, and limited opportunity in the society at large. 17/

In short, the effect of official language designation is greater upon the child, family and social environment than the issue would appear to warrant if language is viewed as a communication mechanism alone. And it is so perceived by the minority groups.

For where a government embarks on what is conceded to be one of its functions, the education of its people, it can do so in a linguistically neutral manner. The government can limit its role to providing funds for school buildings, teachers and text books. Teachers will still be hired, schools attended, and pupils taught, probably in the tongue desired by their parents, usually the vernacular language,18/ but always in the language they understand. Nothing need be said officially about the language in which the instruction is to take place.

And in the early days in the history of the United States, this was in fact the case. At that time all schools in the United States were financed by private funds. The German schools of the 1700's were sectarian in character; ministers were commonly the teachers. School instruction throughout Pennsylvania, Maryland, Virginia, and

the Carolinas was given in German, often to the exclusion of English.19/ As the number of German immigrants increased during the period from 1817-1835 this educational pattern continued. In the farming districts where they settled, the Germans initially had no teachers at their disposal who were familiar with English and, in any event, there was little need for a command of English during those early settlement years. But most importantly, these immigrants threatened no one. Most of the newcomers concentrated in those districts where there were few settlers before them, where the land was most readily available and cheap: the western frontier states of Indiana, Illinois, Ohio, Wisconsin, Minnesota, Michigan, Iowa, and Missouri. So they were left alone. Most of the earliest school laws made no mention of the language to be employed in the public schools.20/

During this initial state of tolerance there was some official recognition of pluralism: Pennsylvania passed a law in 1837 permitting German schools--in some all instruction was to be given in German--to be founded on an equal basis with English ones. 21/ And, in that same year, in response to the German demand, the Ohio legislature passed a law by which the German language would be taught in the public schools in those districts where a large German population resided.

At the local level, accommodations were also made to the native German school populace. For example, in one district in Wisconsin one-third of the textbook funds were specified to be spent for German textbooks; in others school boards could hire only German-speaking teachers; and frequently local school district records were kept in German.22/ In Wisconsin it became the norm that whenever a newly created school district contained a large German population, teachers

were hired and the schools were conducted either exclusively in German or in both German and English.23/

After the Civil War the forces of nativism, led by the American Protective Association (APA), ended the period of leniency for the German community. The teaching of German in the public schools came under severe attack in the 1880's. Restriction of non-English language instruction was not rationalized on technical or educational grounds: rather, the legislation was based on a number of political and economic considerations which, when combined, had made the recent immigrants a formidable threat.

Immigration reached an all-time high in the 1880's and, since declarant aliens were permitted to vote, the new immigrants threatened to change the political balance in many states. 24/ Further, most of the newcomers were Catholic. Thus, religious bigotry was added to xenophobia and to the economic threat caused by their cheap labor flooding the market. 25/ The APA moved against aliens on two fronts: their language and their church.

The remedy developed by the Germans was the use of the private and parochial schools for instruction in the mother-tongue, 26/ since the restrictive school laws at that time made little, if any, mention of schools other than public schools. The practice became so widespread that, in largely German districts, "the parochial schools in connection with the Roman Catholic and the Lutheran churches had, to a very considerable degree, displaced public schools." 27/

it was a remedy that was viewed by opponents as a direct insult, "contrary to the spirit, genius, and institutions of the United States" 28/ and as a potential menace to American institutions. Thus, in 1889, legislation was proposed in a number of states attempting to prescribe the use of English in private and parochial schools. 29/

The Germans were strongly opposed to the laws not only on the school language grounds but also because these laws represented an attack on their religion, culture, and personal liberty:

> They (the Germans) were convinced that (the laws) arose from hatred to foreigners, that it was sinister in its purposes; in short, that it was intended as a blow against all they held most dear. They, on their part, protested that they had no hostility to the public schools nor to the English language...Germans understood that the law was aimed at the destruction of all religion. A panic fear seized upon the minds of the lovers of the German language and customs... 30/

Legislation against Catholics was being passed at this time and gave further justification to the fears expressed above by the German Catholics. New state constitutions included prohibition against sectarian instruction (e.g., Nebraska in 1875, Colorado in 1876, Idaho, Washington, and Wyoming in 1889); numerous states enacted legislation barring all sectarian books not only from the classroom but from school libraries (e.g., Kansas in 1876, Oklahoma in 1890, Idaho in 1893, South Dakota in 1901); prohibitions of state aid to church schools were strengthened by constitutional provisions (e.g., North Carolina and Texas in 1876, Delaware in 1897, Wisconsin in 1898, and in 39 states by 1903). 31/

Perhaps the most heated controversy about the use of English in the private and parochial schools took place in the German-populated states of Illinois and Wisconsin. The Edwards Law in Illinois and the Bennett Law in Wisconsin were passed in 1889. Both Laws required, for the first time, that parochial

as well as public schools teach elementary subjects in the English language.

And it was clear that educational instruction was only peripherally involved. The reasoning may be exemplified by an editorial in the Chicago Tribune on March 15, 1890:

> In Illinois and Wisconsin a contest between the supporters and enemies of the American free schools, between the right of Americans to make their own laws and the claim of an Italian priest living in Rome that he has the power to nullify them can have but one termination--the defeat of such arrogance and presumption. 32/

Roger Vail, Vice-President of the Catholic Truth Society, answered that Catholics "have nothing against the demand that reading, writing, arithmetic, and U. S. History be taught in the English language," but they objected to the sections that give local authorities power over the parochial school system. 33/ The Catholic hierarchy in Wisconsin made a similar statement of protest to the Bennett Law. 34/

The German Lutherans of the states affected were caught in the middle of this anti-Catholic movement for they had a sizable parochial school system as well. They saw these laws as a violation of the freedom of conscience by forcing children into the public schools or forcing upon them books "permeated by the toxins of atheism and irreligion." 35/

The Missouri Lutheran Synod appointed a General School Committee to direct the opposition to both the Bennett and Edwards Laws. In addition to other responsibilities, the Committee was empowered to solicit contributions and lend financial aid to district synods who could not meet the costs incurred in opposing these laws, publish articles in the

secular press, and secure the nomination of candidates who supported their position on the school question. 36/

With the exception of the Lutherans, the majority of Protestant denominations favored the new school laws. 37/

In the 1890 elections the Democrats, supported by the German Lutherans, the Polish and German Catholics, the Scandinavian Lutherans, and the German Freethinkers, won in Wisconsin and Illinois on anti-Edwards and Bennett platforms. 38/ Both acts were repealed in 1893 and the two states passed compulsory attendance legislation without any reference to the English language.

The attacks of 1889-91 left their impact, however, on the German schools. "The footing that English gained was not taken back even after the repeal of the...Acts." 39/

This increased interest in English as the language of instruction which began in the lat 1880s continued through World War I.

The increased migration and the War brought about a much greater emphasis on "Americanization" 40/ and the need for English as the instruction medium to effect this. Thus, in the decade 1913-23, partly in response to the urging of the Federal government, states passed as many statutes requiring English to be the language of

instruction in the public and private schools as had been passed in all the years previously. In 1903, fourteen states had such a statutory requirement; in 1913, the number had increased to seventeen; and in 1923, the number was thirty-four;41/ the same number found today.

These statutes were usually coupled with others relating to the Americanization movement: the requirement of the pledge of allegiance to the flag, the teaching of American history and government, and, most important to our concern here, the restriction of the teaching of foreign languages.

The question of the teaching of German in the parochial schools was revived during the First World War. At the onset of the War, state officials maintained the right of private schools to give instruction in German. One such official declared:

> Private parochial schools have the legal right to conduct schools in the German language...so long as they do not violate the law or interfere with the carrying on of the War.42/

But anti-German feelings grew and restrictive legislation concerning the use of the German language in the schools was inevitable. German was specifically mentioned in the laws of several states. But the German provisions in 1903 and 1913 were permissive while those in 1923 were prohibitive.43/ Ohio provides an excellent example in this regard. In 1903, the provision was as follows:

> The Board of any district shall cause the German language to be taught in any school under its control, during any school year, when a demand therefor is made, in writing, by 75 freeholders resident of the district, representing not less than forty pupils who are entitled to attend such

> school, and who, in good faith, desire and intend to study the German and English language together; but such demand shall be made at a regular meeting of the board, and prior to the beginning of the school year, and any board may cause German or other languages to be taught in any school under its control without such demand.

In 1913, it was changed to read:

> Boards of Education may provide for the teaching of the German language in the elementary and high schools of the District over which they have control but it shall only be taught in addition and as auxiliary to the English language. All the common branches in the public schools must be taught in the English language. 44/

By 1923 the statute, in appropriate part, read:

> Sec. 7762-1. That all subjects and branches taught in the elementary schools of the State of Ohio below the eighth grade shall be taught in the English language only. The board of education... shall cause to be taught in the elementary schools all the branches named in the...General Code. Provided that the German language shall not be taught below the eighth grade in any of elementary schools of this state. 45/ (Emphasis supplied)

The Ohio statute and similar laws against German language instruction were declared unconstitutional by the Supreme Court. 46/

The leading case, Meyer v. Nebraska, 47/ made clear that the prohibition or undue inhibition of the use of teaching of a foreign language is a violation of due process and unconstitutional. However, it also explicitly assumed that a state statutory requirement of English instruction in the public and private schools was sanctioned by the Constitution.

The Court said:

"It said that the purpose of the legislation was to promote civic development by inhibiting training and education of the immature in foreign tongues and ideals before they could learn English and acquire American ideals; and 'that the English language should be and becomes the mother tongue of all children reared in this State." It is also affirmed that the foreign born population is very large, that certain communities commonly use foreign words, follow foreign leaders, move in a foreign atmosphere, and that the children are thereby hindered from becoming citizens of the most useful type and the public safety is imperiled."

"...The protection of the Constitution extends to all, to those who speak other languages as well as to those born with English on the tongue. Perhaps it would be highly advantageous if all had ready understanding of our ordinary speech, but this cannot be coerced by methods which conflict with the Constitution--a desirable end cannot be promoted by prohibited means."

"The desire of the legislature to foster a homogeneous people with American ideals prepared readily to understand current discussions of civic matters is easy to appreciate. Unfortunate experiences during the late war and aversion toward every characteristic of truculent adversaries were certainly enough to quicken that aspiration. But the interference is plain enough and no adequate reason therefore in time of peace and domestic tranquillity has been shown.

"The power of the State to compel attendance at some schools and to make reasonable regulations for all schools, including a requirement that they shall give instructions in English is not questioned. Nor has challenge been made of the State's power to prescribe a curriculum for institutions which it supports...Our concern is with the prohibition...No emergency has arisen which renders knowledge by a child of some language other than English so clearly harmful as to justify its inhibitions...We are constrained to conclude that the statute as applied is arbitrary and without reasonable relation to any end within the competency of the State." (Emphasis supplied)48/

Despite the court rulings, the practical effect of World War I and the accompanying state legislation resulted in the German language effectively being dropped from the high school curriculum. Thus, in 1915 approximately 324,000 students were studying German. By 1922, four years after World War I ended, the high schools had less than 14,000 students of German.49/

The road back was slow and World War II made matters doubly difficult. The result was that, although there was an increase in the total high school population from 1,300,000 in 1915 to 5,400,000 in 1948, German enrollment dropped in those years from 324,000 (25%) to 43,000 (.8%). 50/

We have focussed on the German immigrant experience for the sake of continuity, but similar restrictive legislation concerning the language of instruction in the school system took place generally during this period. Although frequently phrased in general terms, when examined it becomes clear that the legislation was aimed at minority groups regarded as alien or hostile to the majority. 51/ For example, the American Indian and Japanese groups saw official action on language policy used to control and limit their role in American life.

English language instruction in the Indian schools was first mentioned in the 1868 report of the Indian Peace Commission and in 1879 the first off-reservation boarding school--the institution which was to dominate Indian education for the next fifty years--was established at Carlisle, Pennsylvania. The purpose of this school became clear in the succeeding decades: to separate the Indian child from his reservation and family, strip him of his tribal lore and mores, emphasize industrial arts, and prepare him in such a way that he would never return to his people. Language became a critical element in this policy. English-language instruction and abandonment of the native language became complementary means to the end. 52/

The language issue, which had received little attention, now was mentioned in almost every report concerned with Indian education. In 1881, the Board of Indian Commissioners, in their report to the President, said on this subject:

> The Policy adopted of teaching only English in the Government schools is eminently wise... we have already raised two generations of Indians by unwise theories of education...a better system is now in use, and we trust the time is not far distant when English books and the English language will be exclusively taught in Indian schools. 53/

The coercive elements in such a policy become more apparent later in their document:

> But so long as the American people now demand that Indians shall become white men within one generation...(they) must be compelled to adopt the English language, must be so placed that attendance at school shall be regular, and that vacation shall not be periods of retrogression, and must breathe the atmosphere of a civilized instead of a barbarous...community.54/

By 1886, there did not exist an Indian pupil whose tuition and maintenance was paid for by the U. S. government who was permitted to study in any language other than English. 55/ Aside from the forced use of the English language, Indian dress and religious practices were prohibited in the schools, and all males were ordered to cut their hair short (although many Indians believed in the supernatural significance of long hair). Further Indian students were punished for speaking their own language.

They remained in these off-reservation boarding schools for eight years under military discipline. During this period the Indian students were not allowed to see their parents. The discovery of mineral wealth on the Pacific Coast and in the Rocky Mountains had an explosive effect on the population. Pressure also came from

the promoters of the transcontinental railroads who sought grants of land along their routes. Thus, the Dawes Severalty Act, which ushered in the Allotment period of Indian history, was passed. Its essential features were: (1) Tribal lands were to be divided and the President was authorized to assign or allot 160 acres to each Indian family head; (2) Each Indian would make his own selection; but if he failed or refused, a Government Agent would make the selection; (3) Title to the land was placed in trust for 25 years; (4) Citizenship was conferred upon all allottees and upon other Indians who abandoned their tribes and adopted "the habits of civilized life;" (5) Surplus tribal lands remaining after allotment might be sold to the U. S. 56/ The allotment law and subsequent statutes set up procedures which resulted in the transfer of some 90 million acres from Indian to white owners in the next 45 years. 57/

The Indians, like the Germans of the same period, resisted such attacks on their land, customs, and language. Many refused, for example, to send their children to school and students frequently burned schools down. 58/ Congress, desiring to break the resistance, passed legislation in 1893--repealed the following year--authorizing the withholding of rations and money from any Indian family for an Indian child who shall not have attended school during the preceding year.

W. N. Hailman, Superintendent of Indian Schools in 1896, questioned the educational validity of the Government language policy:

> ...the great majority of Indian teachers have labored under the delusion that they can hasten the acquisition of the English language on the part of the pupils by compulsory measures, visiting more or less severe penalties upon the unfortunate children who were caught in the use of the Indian speech...To throw contempt upon the child's vernacular...is so manifestly unreasonable and so pernicious in its perverting and destructive influence upon the child's heart-life that it is a wonder that it even should have been attempted by the philanthropic fervor of workers in Indian schools. 59/

The mission schools which remained still taught in a combination of English and native languages. As a result, at the request of various Indian tribes, contracts were made with the missions in 1905, the money being taken from treaty and trust (tribal) funds. This use of tribal funds was challenged as being contrary to the policy stated in the Appropriation Act of 1897, prohibiting an appropriation for education to be used by a sectarian school. The Supreme Court held, in 1908, that both treaty and trust funds to which the Indians could lay claim were not within the scope of the statute and could be used for the mission schools, the only bilingual schools for Indians. 60/

It should be clear from this brief review that official action on language was not related to scholastic achievement but was being viewed as a controlling and coercive device relating to a number of other issues with respect to the Indian's role in American society.

The experience of the Japanese-Americans in the United States provides an even more poignant example of the use of the English language instruction requirement as a political act to evidence hostility by the government toward a people.

Annexation of Hawaii to the United States had the effect of freeing thousands of Japanese contract laborers on Hawaii sugar plantations, many of whom came to the States. For example, 2,844 Japanese entered the continental United States in 1899; but in 1900, the number rose to 12,635. From 1900 to 1908--the year the Gentlemen's Agreement took effect limiting immigration to the States from Japan--a total of 139,103 came to the States, 61/ an average of more than 10,000 Japanese a year.

The number of Japanese in the States never was very large (less than 140,000 at its peak in 1930) but the sharp jump in the immigration rate at this time and the suggestion of President Theodore Roosevelt in 1906 that Japanese aliens be permitted naturalized citizenship made race hatred a politically potent issue. Anti-Japanese agitation in California began to take on great intensity with riots on occasion, 62/ segregation, 63/ licensing requirements and discriminatory treatment 64/ to restrict their employment and advancement. Many laws restricting employment did not mention the Japanese specifically but accomplished the same result by directing their aim to "the alien who was ineligible for citizenship." 65/

In this atmosphere the California legislature passed the Alien Land Law of 1913 66/ preventing the ownership of land by "aliens ineligible for citizenship" which was aimed not only at preventing further Japanese expansion in agriculture but also at driving the Japanese from the state. The Act, which was later strengthened in 1920 and

1923, led to the Immigration Act of 1924 which, under the formulas utilized there, limited the Japanese to a nominal immigration quota (126 persons a year). But the agitation and discrimination did not stop but continued until World War II brought evacuation and internment of both Japanese aliens and citizens. 67/

In Hawaii the blatant discrimination found in California was absent, perhaps due to the relatively large percentage of Japanese (39.7%) residents. 68/ Nevertheless, after U.S. acquisition of the Islands in 1900, many of the mainland attitudes were reflected in the policies of the Hawaiian Territorial Government. Thus, the Third Report of the Commissioner of Labor of Hawaii in 1905 "was largely devoted to an exposition of the complaints leveled against the Asiatics because of their competition with the whites in nonplantation pursuits... /T/he resentment...developed to the point that organizations were formed and programs for legal restraint were directed against them." 69/

Limitations were quickly placed on their access to the political arena and in public service. In the first two decades of the Twentieth Century the Chinese and Japanese in Hawaii consistently had the lowest percentage of eligible voters registering to vote. The reason for this was stated by one commentator as follows:

> To understand why so few Orientals who can register do so, it is necessary to observe the registration policy of election officials in the territory. Up to 1922 it was the custom to require documentary proof of Hawaiian birth before any person of Oriental ancestry was allowed to vote....The expense of these documents was so high as to be almost prohibitive, and as a consequence many men, and more women, of the Oriental races were deterred from voting.70/

In 1925 Hawaii passed an act 71/ aimed at reducing public service employment of Chinese and Japanese by requiring all employees of the territory and counties to be citizens.

Given this context it was not surprising that the government moved against the private foreign language schools. Private foreign language schools had started even prior to the Island's annexation to the United States in 1898. They were initially church-sponsored and had as their major purpose the continuation of a particular religious tie for the community involved. Thus, a German language school in connection with the Lutheran Church was started in 1882; a Portuguese language school in 1889; a Chinese language school in 1892; and in 1896 the first Japanese language school was started. 72/ For the Japanese, these schools not only served a religious purpose--the first ones were Christian mission schools but later Buddhist schools predominated--but also filled an educational need, since many Japanese were contract laborers intending to return to Japan after the period of indenture had expired. 73/

By 1920, the Japanese had organized 163 private foreign language schools in Hawaii with approximately 400 teachers serving slightly more than 20,000 pupils. In addition, there were 10 Korean schools with 800 pupils in attendance and 12 Chinese schools teaching 1,150 pupils. 74/ All of these schools supplemented the public school system where English was the required medium of instruction 75/ and all were run exclusively by private contributors. They met before or after the public school day. 76/

The Act of 1920 77/ provided that all private foreign language schools and teachers would have to obtain a license and be subject to various regulations of the Department of Education. Private foreign-language schools were limited to one hour a day, and the courses, textbooks, attendance requirements, and age qualifications of the pupils were all to be prescribed by the Department of Education. Teachers in these schools would be required to be able to speak, read and write the English language and be versed in American history and government. 78/

The declared object of the Act was to regulate these foreign language schools and the teaching of foreign languages so that the Americanization of the pupils might be furthered. The Governor, a Federal appointee, said.

> When one considers that of the 16,548 children enrolled in foreign-language schools, 16,178 are American citizens and will take part in the Government of the United States, and especially the local government of Hawaii, it is not difficult to understand the concern which the alien-language school gives the citizens of Hawaii. If these children are to be Americans, the American language and American principles as developed in the American public schools must be a dominating factor in their lives. As long as the parents of these children agressively foster their alien nationality and alien ideals, thus constituting a nucleus of alien principalities, they constitute a potential if not actual menace to a friendly adjustment and good will.
>
> I sincerely hope that the not far distant future will find the alien parents will withdraw from their attempt to alienize our American children. 79/ (Emphasis supplied)

It is interesting to note that although only 900 children out of the 36,000 in the public school system spoke English as a native tongue, 80/ no pressure for instruction in the native tongue was evident.

The Japanese community in Tokushige v. Farrington challenged the constitutionality of this legislation and won at both the District Court and the Supreme Court level. 81/

In California the attack on the Japanese private foreign language schools was also part of the general strategy of harassing normal development in the Japanese communities already noted.

These schools had started in Seattle and San Francisco in 1902; and by 1918, there were some 80 of them in the States, with 2,442 pupils, and 47 kindergartens with 1,023 children. 82/ Even more than in Hawaii, they provided an important social function, giving a cohesiveness to the community and becoming the primary basis of close friendships. 83/ Thus, they performed the same functions as many church-related schools performed for other ethnic groups. The Japanese were aware of this and noted the different government reactions. 84/

In 1921, California passed a law carefully modeled on the Hawaiian statute of 1920. After the Farrington decision the California Attorney General indicated that the law as violative of the Constitution and would not be enforced. 85/

Following the outbreak of World War II, the Japanese, under scrutiny and public pressure, closed the schools in all three Western states. But the fact of their existence up to that time was raised again and again at the hearings on Japanese interment as proof of the potential

danger the Japanese represented on the West Coast. 85/ On the other hand, Japanese spokesmen pointed out the schools were in part a necessary reaction to the discrimination to which the Japanese were subject. With employment channels frequently limited to their own community, the Japanese language became essential. Further, the State of California refused to place the Japanese language in the public school curriculum. 87/

The final report of the Tolan Committee which investigated Japanese evacuation emphasized the Japanese language schools; although in discussing the German and Italian alien and citizen, their language schools were not mentioned at all. 88/

In sum, the Legislative and Executive Branches, at both the state and Federal level, took a consistent line in favor of English in the school system until the passage of Title VII of the Elementary and Secondary Education Amendments of 1968, 89/ the "Bilingual Education Act." The significance of this Act is that it marked the first time the Federal government took cognizance of the special educational problems of children who are the products of "environments where the dominant language is other than English" and not only permitted but encouraged instruction in a language other than English. Under this Act, funds were provided to (a) develop special instructional materials for use in bilingual educational programs, (b) provide in-service training to prepare teachers, teachers aides, and couselors to participate in

bilingual education programs, and (c) establish, maintain, and operate special programs for children of limited English-speaking ability.

The belated recognition had only little to do with scholastic need. Rather it reflected the changed attitude toward minorities and pluralism within the Federal structure. By 1967 when the Federal government for the first time, by its passage of the Bilingual Education Act, suggested the permissibility--even the desirability--of instruction in the native language, both the Executive and Legislative Branches had both come out rather strongly for civil rights and focused on the deprivations suffered by various minority groups. The wave of ethnic nationalism which accompanied the civil rights movement and social changes in the '60's no longer required Spanish-speaking parents to remain mute or to soften their desire that the Spanish language be given a more meaningful role in their children's education. The Federal government had changed its English language designation to the designation of many languages to indicate and effect a more open stance in American life.

The new policy was implemented in a variety of ways at the Federal level. The Indian Education Act of 1972 specifically permitted and appropriated funds for education in Indian languages. The Civil Rights Act of 1964 and the Voting Rights Act of 1965 contained various provisions designed to open up the political process to the minorities previously excluded by language and other means. These laws, as we shall see, specifically eliminated English literacy requirements in a number of areas and permitted Spanish literacy to be substituted for English literacy under certain circumstances.

The Regulations to Title VI of the Civil Rights Act are enlightening in this respect. It provides that "no person in the United States shall, on the ground of...national origin...be denied the benefits of...any program or activity receiving Federal financial assistance" and the regulations promulgated under it. The Regulations issued in 1970 specifically spoke to language discrimination:

> "Where inability to speak and understand the English language excludes national origin-minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students." 90/

State government response was equally strong. The various states rapidly repealed their English language instruction requirements. Sixteen states by the end of 1973 passed their own bilingual education acts and 28 states are participating in the Federal bilingual program.

The climax to this effort on the educational front was the Supreme Court case of Lau v. Nichols. 91/ In that case, non-English-speaking Chinese students petitioned the Court to require the San Francisco School District as a constitutional right to provide compensatory Chinese language instruction to permit them to obtain an adequate public education. In a somewhat unusual, but significant, move the U. S. Government filed a brief as a friend of the Court in favor of the petitioners. And in a unanimous opinion the Supreme Court held in favor of the students relying, however, on the Civil Rights Act rather than the Constitution for its holding.

II. Language Designation as a Means of Controlling Access to the Political Process

The same manipulation of access to the political process via the official designation of language evidences itself in the political arena. The pattern noted above holds: there is the initial period of relative tolerance toward outsiders evidenced through implicit but silent recognition of the English language (1780-1880), active development and support of English language qualifications in order to exclude (1880-1920 and continuing through World War II), and then an active questioning of these official actions, their reversal and government recognition of other languages in order to permit greater openness as part of a changing political framework. This latter began at the end of World War II but gained significance during the decade of the '60s. We shall examine this pattern by looking closely at the requirements for voting and for citizenship, two of the key aspects of political control.

A. Voting Qualifications

As is well known, under the U. S. Constitution the individual states establish the criteria for voting in Federal and state elections. Prior to the 1850s the requirements were few: age and residency being the most frequent. Citizenship was generally not required (I shall return to this) and English language skills were not mentioned at all.

The first official English language requirement arose at the instigation of the anti-Catholic Know-Nothing Party who had as a party plank the restriction of the franchise to exclude foreigners. In the mid-1850s they gained considerable strength as a party in New England, capturing the Massachusetts State Legislature. As a result of this influence,

the Connecticut (1855) and Massachusetts (1857) State Legislatures passed laws requiring the voter to be able to read and write English before exercising his right of suffrage. The requirement was directed against the Irish Catholics. 92/ Thus, the Boston Herald for April 29, 1857, reported that the proposed literacy requirement was "aimed as has been boldly avowed, against that class of foreigners who are presumed to be Catholics."

There the matter rested until after Reconstruction when the South devised a series of administrative and legal requirements to prevent Negroes from voting. 93/ Mississippi led the way consciously modeling its Constitutional Amendment of 1890 requiring English literacy as a condition of the suffrage on the Connecticut and Massachusetts statutes. 94/ The Mississippi provision (which served as the model for the other English literacy statutes in the South) was passed with the awareness that 60 percent of the Negroes, but only 10 percent of the whites, could not read English. 95/

When the increased immigration from 1890-1920 threatened to change the political balance in many states, racial hatred easily spread against other groups in other states. The dates of English literacy test suffrage legislation in northern and western states parallels the southern legislation and show the interrelationship: Wyoming (1889), Maine (1892), California (1894), Washington (1896(, Delaware (1897), New Hampshire (1902), Arizona (1912), New York (1921), Oregon (1924),

and Alaska (1927) vs. Mississippi (1890), South Carolina (1895), Louisiana (1898), North Carolina (1900), Alabama (1901), Virginia (1902), Georgia (1908), and Oklahoma (1910). 96/

We shall examine the legislative history behind a number of these statutes to confirm the thesis that the official requirement of English was intended to control access to the political process. There is no need to examine further the reasons behind the English literacy requirements in the Southern states. Their anti-Negro bias has been well established and thoroughly documented.

On the West Coast the perceived threat was the Oriental and English language designation here as in the school system was designed to restrict his entrance and full participation in American life.

In the State of Washington this is very clear. Chinese laborers were brought into Washington in the 1860's and 1870's as cheap labor to work in the gold mines and in the 1880's to work on the railroads. Anti-Chinese sentiment led to violent race riots in 1885-86. Bills were introduced in the Territorial Legislature, beginning in 1885, to prohibit Chinese from owning land, from operating laundries and from being hired--all designed to harass the Chinese population and encourage them to leave. During the Constitutional Convention of 1889 in Washington, both literacy and Chinese exclusion proposals were made in connection with voting qualifications. And on the same day in 1895 that the literacy amendment was introduced, bills penalizing a person "who wears a queue" were also introduced. 97/

In California there were similar reasons:

> There is a considerable Chinese vote growing up in this State. While foreign born Chinese are denied the right to vote, the native born Chinese is invested by the Constitution with all the privileges of citizenship. A Chinese born in America is eligible to the Presidency. Quite a crop of Chinese children are growing up here, and in a few fyears enough of them will reach voting age to make themselves felt. Had the Chinese who came here twenty years ago brought their women with them we would today have an alien vote that would have caused an immense deal of trouble to this coast. It is very fortunate that the Chinese, in the days of unrestricted immigration, did not bring their wives and household goods. Had they done so the Anti-Chinese movement would have assumed its proper phase--that of a race conflict. A few thousand Chinese votes would complicate political matters in California considerably. As it is, in five years there will probably be 2,000 Chinese voters in this State. There will be no end of combiating to catch this vote. 98/

And an anti-Mexican bias was also present:

> I have observed that there has been a movement lately in the South to disfranchise the colored citizens by the adoption of amendments similar to this; notably in the State of Mississippi. I am not willing that the Republican party of California shall set an example which may be quoted approvingly by the Solid South in its movement to disfranchise colored citizens. I do not believe it would be just to disfranchise those citizens of California who became such by virtue of the treaty between Mexico and the United States. I know, and you all know, there there are many citizens of California of Spanish blood and descent, who are unable to read the Constitution in the English language...I believe every man who has attained manhood, and who has not sacrificed his right by crime, should have a voice in the government of the State in which he lives. I do not believe in making a corner in the right of suffrage, to use a commercial phrase. It might be to the interest of those who thus became a privileged class to lessen the opportunities of men to learn to read and write the English language. I believe the doctrine advocated by our great party in the years past--the doctrine of manhood suffrage--is the true one, and I am opposed to the adoption of this amendment. 99/

The argument was, of course, made by some that English literacy requirements were intended to uplift the electorate to assure proper knowledge

on which judgments were to be based. But the argument always contained a racial or religious thrust:

> Yet the illiterate vote is no slight factor in this, as in other States. The eleventh census report upon this subject has not yet, we believe, been published, but it may safely be presumed that the conditions of 1880 have not--with ignorant foreigners being registered and herded like cattle--been improved. In 1880, then, there were in California 3,267 white males over the age of 21 years who were either unable to read or write. There were 16,857 illiterate colored men who were of the voting age. Here were 20,484 men so ignorant that they could not read a sentence, yet the great majority of them exercised the right of suffrage--this at a time when the brainiest woman in the State was not permitted to cast a ballot. If but this proportion of illiteracy were maintained, there would have been in the State in 1890 about 28,600 men who had attained their majority and yet possessed not the rudiments of a book education. When it is remembered that the entire vote of California in 1890 was but 250,220, the full significance of the terrible ignorant vote will be appreciated by every thoughtful person.
>
> In some instances, illiteracy is doubtless a misfortune rather than a fault, yet this constitutes no justification for placing a ballot in the hands of an incompetent voter.100/

In New York, where the New York Times favored the English literacy amendment to the State Constitition on the grounds of elevating the electorage and the need for a common language to assure Americanization 101/, the political flavor of the provision is also present. 102/

The New York law originated in the Constitutional Convention of 1915 and was explicitly modeled after the California and Connecticut statutes. 103/ Its purpose was to prevent 1,000,000 New York Jews from voting the city's Republican administration out of office. Its racial bias was attacked by Louis Marshall, President of the American Jewish Committee. The New York Times reported as follows:

A spirited protest by Louis Marshall against the proposal by Charles H. Young of Westchester, a Republican delegate at large, establishing by constitutional proviso an educational test for the exercise of the franchise, which would include ability to read and write the English language, lent unusual zest to tonight's session of the Constitutional Convention.

Mr. Marshall was followed by Gordon Knox Bell, a nephew of James Gordon Bennett, who reminded the Convention that after all, this was an Anglo-Saxon country founded on traditions inherited from the "bleak islands overseas, now wrapt in war clouds," and urged them, on that gound, to support the Young proposal. ...

[Mr. Marshall stated that] "[t]here are thousands of citizens in this state who cannot read and write English, but who are good citizens for all that; educated men who know all they need to know about our institutions, who in fact have a great deal more information on that subject than many of those who can read and write English."

Mr. Marshall said there were about 1,000,000 New Yorkers who did not speak and write any language but Yiddish.

"They cling to that tongue through sentiment," he said, "because enshrined in it are memories of a martyrdom patiently borne through long centuries of persecution. They come from a race which, when the Barons at Runnymede were compelled to make their X mark under the test of the Magna Charta, already had developed a literature and given the world through one branch the Decalogue and through another the Sermon on the Mount."

Mr. Marshall warned the Convention that by adopting the amendment it would alienate the Jewish vote now decidedly friendly to the proposed new Constituion. Mr. Bell provoked applause by his speech. The Convention, he said, should lay aside all political consideration in dealing with the Young amendment.

"It points the way to a future which in light of the present grave crisis we must face with fortitude," he said. "It is not a question of nationality as much as it is a question of race. Search your hearts deeply and see if the Anglo-Saxon in you does not assert itself for we are Anglo-Saxon after all. We are young. Our only hope of making a nation out of ourselves rests on solidifying the elements that come to our shores and fitting them to walk in the paths to which our Anglo-Saxon ancestry and our Anglo-Saxon traditions point as the paths in which lies our national destiny." 104/

Although we have limited our discussion to only a few of the twenty states that by 1927 had passed English literacy suffrage legislation, there is evidence that the reasoning holds thoughout. 105/

As might also be expected, the judiciary, prior to World War II in so far as it was asked to comment on these tests, upheld their constitutionality. 106/

But after World War II, in a series of cases arising from the South, the Supreme Court began to strike down these political language requirements and the Congress took action to open the political process to the non-English speaking. The first Supreme Court cases involved issues of administrative discretion and the Court held constitutional provisions requiring a citizen to "understand and explain" legal material was a discriminatory device masquerading as a literacy requirement. 107/ Then in 1959 the Supreme Court, without examining the legislative history of the provision, upheld an English literacy--read and write--requirement in North Carolina on the grounds that "literacy and illiteracy are neutral on race, creed, color and sex." 108/ This was the last time the Court would examine the legislative setting of the origin of the statute and also the last time it would sustain such legislation.

The Congress then passed the Voting Rights Act of 1965 109/ primarily to meet the pattern of Southern anti-Negro suffrage legislation which the courts had been struggling with on a case-by-case basis. The Act

suspended literacy tests and other educational prerequisites to voting in any state where they were in force and less than 50 percent of the eligible voters had registered or voted in the 1964 Presidential elections. The extensive hearings on the Act were limited to the problem of discrimination in the administration of these tests in the South and it was expected that the force of the Act would be to permit "millions of non-white Americans...to participate for the first time on an equal basis in the government under which they live," 110/ although technically the Act applied to some Northern states as well. 11

Significantly the Voting Rights Act of 1965 also contained the following provision:

> "no person who had successfully completed the sixth grade in a public or private school in the United States, its territories, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English, shall be denied the right to vote in any...election because of his inability to read or write ...English."

Since Puerto Rico is the only area "in the United States...in which the predominant classroom language was other than English," the statute was clearly intended to assist the Puerto Rican migrant to the United States who, in many cases, could not vote because of the 1922 New York State amendment to its Constitution which provided that no person could vote unless he was able "to read and write English."

The Supreme Court held this provision, Section 4(e), constitutional under the Federal enforcement powers of the Fourteenth Amendment, arguing Congress might predicate a judgment that to deny the right to

vote to a person with a sixth grade education in Puerto Rico's schools constituted as invidious discrimination in violation of the Equal Protection Clause. 112/

A state court, California, declared the English literacy test unconstitutional, 113/ but the Supreme Court has avoided ruling on the question. 114/ The Voting Rights Act Amendments of 1970 extended the suspension of the literacy tests to include the entire United States 115/ and have effectively mooted the issue. 116/

B. Naturalization Requirements

Prior to 1906, there was no requirement in the naturalization laws that an alien either speak or be literate in English. Indeed, the only provision, relevant to this discussion, that a would-be United States citizen had to demonstrate was an attachment to the principles of the Constitution. 117/

Some Federal courts imposed an English literacy gloss on this language of the naturalization statute on the grounds that the applicant could not be attached to a document he could not read. 118/ But the cases were not unanimous in this regard and Congressional practice prior to 1906 belied any linguistic prerequisite to citizenship since Congress had, on several occasions, collectively naturalized large numbers of non-English speaking persons (in Louisiana 119/, in Florida 120/, and in the Southwest 121/).

This tolerance was even more remarkable when we realize that it was the practice in most states prior to 1880 for declarant aliens to be permitted to vote. The pressures noted earlier in this essay caused this to be changed gradually so that by 1927--the dates parallel almost precisely English literacy suffrage laws and English language school laws--only citizens could vote in any Federal or state election. 122/

The relationship between naturalization and language might have remained loose and somewhat ambigious had not voting frauds forced a discussion of the problem. The courts, often corrupt, would engage in wholesale naturalizations on the eves of election and many votes were bought and sold. These abuses in the naturalization administration and its effects on the franchise were recognized and became the subject of the President's Report to Congress in 1905. The Report called for regularized naturalization laws, restriction of the franchise, and, as a not wholly required corollary of the latter, the need for aliens wishing to become citizens to speak English.

The Report recommended:

> "Second. That no one be admitted to citizenship who does not know the English language...The Commission is aware that some aliens who can not learn our language are good citizens. They are, however, exceptions, and the proposition is incontrovertible that no man is a desirable citizen of the United States who does not know the English language." 123/

The Nationality Act of 1906 adopted this recommendation and, thus, it first became law that an alien had to speak English to become naturalized.

The purpose of the oral English requirement is graphically seen when placed against the efforts of various groups in the United States to restrict immigration to literate aliens (although not necessarily literate in English). Presidents Cleveland (in 1897), Taft (in 1913) and Wilson (twice) vetoed this legislation. 124/ But in 1917 the provision passed, 125/ the result of an active campaign initiated by the Immigration Restriction League of New England, which feared Irish and German immigrants, and from organized labor. The combination finally overcame continuing presidential resistance.

The requirement that one wishing to become a citizen must show an ability to read and write English was added much later in the Internal Security Act of 1950.126/ The rationale for the English literacy requirement is seen in the Report of the Senate Judiciary Committee and the later remarks of Senator McCarren.

> "The matter of voting is an excellent example of the inadequacy of the present situation (referring to the fact that the former naturalization law did not require English literacy). Many persons even after they have become naturalized are unable to participate fully in the general affairs of their communities and states because of their inability to read English. This causes them to draw together and apart from English-speaking people in order to discuss such matters in their native tongue and thus become further isolated instead of being fully incorporated into their communities." 127/

The language is remarkably similar to that cited earlier of the Federally appointed Governor of Hawaii urging the abolition of the Japanese private foreign language schools. But there was also the uplift theme as well.

> "As a practical matter it is difficult for the sub-committee to understand how a person who has no knowledge of English can intelligently exercise the franchise, especially in states which use the initiative and referendum. It is also difficult to understand how a person who does not understand, or read, or write English can keep advised and informed of the political and social problems of the community in which he lives." 128/

To enforce this English literacy requirement the Attorney General has adopted the following regulation:

> "S 312.1. Literacy requirements.
> The ability of a petitioner to speak English shall be determined from answers to questions normally asked in the course of the preliminary investigation and preliminary examination. A petitioner's ability to read and write English shall be tested by excerpts from one or more parts of the Federal Textbooks on Citizenship written at the elementary literacy level..."129/

In addition to this English literacy requirement, the naturalization statute also requires that an applicant demonstrate a knowledge and understanding of the history and government of the United States.130/ This parallels most strikingly the Americanization statutes in the states after World War I which we mentioned earlier. There is no statutory requirement that such knowledge or understanding must be demonstrated in English but the regulations so require.

The constitutionality of the literacy requirement as a condition of citizenship was upheld in the lower courts. 131/ The legal reasoning was that citizenship is a privilege which Congress may condition before bestowing, and these conditions may be quire different from conduct required of native-born citizens. 132/ The

stated policy basis for the statute--that being able to read the Constitution in the original language assures the seriousness of purpose and adherence to its principles which the oath of citizenship demands--is questionable since there is little reason to believe that the Constitution and its principles can no longer be understood if read in a foreign tongue. Nor is there any reason to believe that ability to comprehend Constitutional niceties is any way relates to good citizenship. The issue is still being litigated 133/ and, if the thesis presented here is valid, will in the next few years be struck down as unconstitutional.

III. Language Designation as a Means to Control Access to the Economy

In the economic sphere language has played a much smaller role in controlling access because the requirement of citizenship was usually imposed with greater effectiveness to exclude the groups involved. Language requirements were generally used as supplementary requirements to citizenship in the economic areas of public service and business.

Most of the statutory English literacy restrictions in the economic sphere arose during the critical period noted earlier, 1880-1920. The most significant of these related to entrance examinations to be conducted in English for a large number of occupations ranging from the professions to barbering. 134/ To understand their purpose and general effect they have to be examined in the context of the anti-foreigner legislation common in the United States at that time at both the Federal and state level.

Prior to the 1880s exclusion of foreigners from various occupations was relatively uncommon. The Pacific States had excluded the Chinese from several occupations, and California had passed an exclusionary tax on foreign miners. But with these limited exceptions, access to the economic mainstream of American society was quite free.

In the 1880s the fear of foreign capital grew substantially, culminating in the Alien Land Law of 1887 which limited alien investment in the United States. 135/ The increased role of the alien in the United

States labor force--by 1909 alien labor composed 1/3 of the labor of the principal industries in the country--resulted in the introduction of several bills in the Congress (one of which passed the House) to exclude aliens from public works employment. This economic competition was exacerbated by the depression of 1913-14.

The several states handled the matter directly: by passing statutes limiting governmental service and private business operations to citizens or those who had declared their intention to become citizens. The extensive character of this regulation may be seen by the listing of Konvitz 136/ of 70 private occupations (covering such diverse fields as junk dealer, pool parlor operator, boiler inspector, physician, attorney, and architect) in every state of the Union which are restricted to citizens.

This extensive restriction of the alien's right to work, both in public and private employment, was the subject of considerable litigation. The initial rationale for sustaining the legislation preventing aliens from obtaining public employment proceeded from the idea of a common ownership or interest which citizens had in the government and which they could decide they wished to distribute only to themselves. In the private area this theory was also advanced and sustained legislation restricting the operations (issuances of licenses) of aliens in areas where public resources were involved (e.g., hunting). Most importantly, the Supreme Court permitted

restriction on alien employment where the business was one having "harmful and vicious tendencies," 137/ a characterization which permitted limitations in areas ranging from the sale of soft drinks to the selling of lightening rods. 138/ After World War II, the Supreme Court seemed to limit this extension of the theory and required rather that there be a reasonable relationship between the classification being adopted and the business regulated or resource being preserved. 139/

This was the warning signal that led in 1973 to a series of cases freeing the alien from restrictions in both state public service 140/ and the professions. 141/ In the latter case, the Court noted that prior to 1879 there were no restrictions on admission to the Bar;but in the decades following, Connecticut and other states passed a number of restrictions limiting an alien's livelihood.

With this wide number of restrictions generally aimed at the group likely to be effected by language requirements, it is not surprising that language requirements were fewer in the economic area than in the political or educational areas. But they were present. Behind the first line barrier of the citizenship requirement for entrance to the bar was the fall back condition of an examination to be conducted in English.

It is necessary to ask why the language requirement was mentioned at all.

The nonlegal, practical necessity of knowing English should have been sufficiently determinative. Entrance requirements by custom reflect the actual linguistic background of the people administering the test and this is always English. And in many states nothing is said concerning language and the result is the same. 142/ What designation does is indicate a basic attitude and reflects the government's and organized society's attitude toward the group which is non-English speaking and seeks access to the economy.143/

This point is even more important since in the private arena many of the literacy requirements are formal only and impose little hardship on the entrepreneur who is not literate in English. Thus, incorporation papers frequently must be in English and in many States certain wares must be labelled in English. Other requirements relate primarily to the consumer; such as those requiring pawnbrokers, small loan operators, or motor vehicle venders to give clear financial statements to their customers in English. Some, like the requirement of child labor not being used except where the child knows English, appear to have a humanitarian origin: to prevent exploitation by the entrepreneur in addition to keeping low cost foreign labor from competing in the market.

Some statutes appear to be based on safety (i.e., a railroad trainman or a driver of a truck carrying explosives having to know English in order to read certain signs) but not all such requirements are so

clearly based on need. And many appear to bear little relationship to the task to be performed (i.e., prison helpers and miners having to know English).

The U. S. Supreme Court has decided only two language cases in the economic area. In the case of Yu Cong Eng v. Trinidad 144/ the Philippine Legislature had passed what was popularly known as the Chinese Bookkeeping Act. The Act made it unlawful for any person or business entity in the Philippines to keep its account books in a language "other than English, Spanish, or any local dialect." The appellant was a Chinese merchant who argued that the Act would effectively drive him out of business along with the other 12,000 Chinese merchants who did 60 percent of the business in the Philippine Islands. The Philippine Government argued that the law was primarily a tax measure reasonably designed to permit it to effectively collect taxes. The Philippine Court interpreted the Act as requiring some books, necessary for tax collection, in Spanish, English, or local dialect, thus permitting the Chinese merchant also to keep his primary books in Chinese.

The Supreme Court did not defer to the local court's interpretation of the statute. It read the statute itself and found a complete prohibition except for Spanish, English, or a local dialect; and, therefore, held the law unconstitutional. It limited its holding, however, to the Philippine Islands and its complicated racial situation.

> "In view of the history of the Islands and of the conditions there prevailing, we think the law to be invalid, because it deprives Chinese persons--situated as they are in their essential and important businesses long established--of their liberty and property without due process of law, and denies them the equal protection of the laws."

The recent change of political climate has also had an effect in this area by eliminating the use of intelligence tests. By extension, language requirements would also appear questionable and the Equal Employment Opportunity Commission appears to have begun to take this view.

In Griggs et al. v. Duke Power Co. 145/ petitioners before the Supreme Court questioned the requirement imposed by the operators of a power generating facility of a high school diploma and two aptitude tests: The Wunderlich Personnel Test, which purports to measure general intellegence, and the Bennett Mechanical Comprehension Test. The high tribunal declared the use of these tests and high school graduation in this situation unconstitutional:

> "On the record before us, neither the high school completion requirement nor the general intellegence test is shown to bear a demonstrable relationship to successful performance of the jobs for which it was used. Both were adopted...without meaningful study of their relationship to job performance ability....The requirements were instituted on the Company's judgment that they generally would improve the overall quality of the work force....good intent does not redeem testing mechanisms that are unrelated to measuring job capability."

The Equal Employment Opportunity Commission has instituted proceedings against a union which published its constitution, collective bargaining agreement, and by-laws only in English and conducting its meetings solely in English. 146/

CONCLUSION

To a general populace language brings into play an entire range of experience and an attitude toward life which can be either immensely satisfying and comforting or, if imposed from without, threatening and forbidding. From a central government's standpoint, a common language forges a similarity of attitude and values which can have important unifying aspects, while different languages tend to divide and make direction from the center more difficult.

Every Federal government--and the United States is no exception--has been concerned with balancing the role that a non-national mother tongue plays for its citizenry: on the one hand the annealing, productive, and harmonizing effect resulting from the comfort obtained in the course of its use by members somewhat alien to the culture of the dominant society; and, on the other, the divisive potential brought on by its retention and strengthening.

We have tried to show the political pattern behind the imposition of English language requirements and their subsequent relaxation, the fact that language was basically being used as a means of controlling people's behavior. The decisions to impose English reflected the popular attitudes toward the particular ethnic group and the degree of hostility evidenced toward that group's natural development. If the group is in some way (usually because of race, color or religion) viewed as irreconcilably alien to the prevailing concept of American

culture, the United States has imposed harsh restrictions on its language practices; if not so viewed, use of the foreign tongue language has gone largely unquestioned or was even encouraged.

As might be expected, language restriction was only one limitation to be imposed. Paralleling the language limitation was other discriminatory legislation 147/ which made clear the wider implications. To the minority group affected, the significance of the language requirement was very great; and, therefore, it was the act of imposition itself which created the reaction by the minority group rather than the substantive effects of the policy.

I have generalized on this U. S. experience, suggesting that it is not an unusual one. In addition, I have suggested that defining language as a means of social control permits a number of disciplines to be brought together in the subject and to coordinate more readily psycho-linguistic, socio-linguistic, and political academic efforts.

FOOTNOTES

1/ Neustupny, "Some General Aspects of Language Problems and Language Policy in Developing Societies," in Fishman, Ferguson and Das Gupta, Language Problems of Developing Nations (Wiley, N.Y. 1968).

2/ E.g., Jernudd and das Gupta, "Toward a Theory of Language Planning, and Rubin, "A View Toward the Future," both in Can Language Be Planned, Rubin and Jernudd, ed., (Hawaii Univ. Press, 1971).

3/ In the next few paragraphs I am following closely the work of John Francis and his assistants in Language Policy in the Bureau of Indian Affairs (Center for Applied Linguistics, 1972), pp. 6-74.

4/ Piaget, The Language and Thought of the Child (1955), p. 59.

5/ Bruner, "On Cognitive Growth," in Bruner, Oliver & Greenfield, Studies in Cognitive Growth (New York, Wiley Press, 1966) p.47.

6/ Sonstroem, "On the Conservation of Solids," in Bruner, Oliver, and Greenfield, Studies in Cognitive Growth (New York, Wiley Press, 1966) p. 223.

7/ Yendovitskaya, "Development of Attention," in Zaporozhets and Elkonin, Soviet Psycholinguistics (Cambridge, Mass., M.I.T. Press, 1971), p. 86. See also, Vygotsky, Thought and Language, (Cambridge, Mass., M.I.T. Press, 1962).

8/ Macmahon, Federalism: Mature and Emergent (New York, Columbia University Press, 1955) p. 4; Riker, Federalism (Boston, Little, Brown & Co., 1964) pp. 5-8; McWhinney, Comparative Federalism (Canada, Univ. of Toronto Press, 1962), p. 17.

9/ The dynamic aspects of the Federal structure have been discussed by a number of commentators although language policy has usually not been seen as a key aspect in this movement. Friedrich, Trends of Federalism in Theory and Practice (New York, Praeger, 1968) p. 173; Duchacek, Comparative Federalism: The Territorial Dimensions of Politics (New York, Holt, Rinehart & Winston,1970), p. 279.

10/ The quoted phrase is from Nebrija, an early Spanish grammarian. It is quoted with interesting examples of its application in Heath, "Colonial Language Status Achievement: Mexico, Peru and the United States" (essay submitted to the VIII World Congress for Sociology, Toronto 1974). The analysis of the imposition of language by the conqueror has been carried out very carefully, if some unrelentingly, in German de Granda, Transculturacion e Interferencia Linguistica en el Puerto Rico Contemporaneo 1898-1968 (Puerto Rico, Edil 1972). Carmelo Delgado Cintron is examining the linguistic-cultural role in relation to U. S. legal institutions in Puerto Rico in a series of excellent articles. E.g., Delgado Cintron, "El Tribunal Federal Como Factor de Transculturacion en Puerto Rico," 3 Rev. de Derechos Humanos 112 (1973).

11/ E.g., Haugen, The Norwegian Language in America (Indiana Univ. Press, 2 Vol. ed. 1969); or Fishman ed., Language Loyalty in the United States (1966).

12/ This view goes contrary to a number of commentators who have tended to minimize the governmental role or even to argue that it was "counterproductive." E.g., Kelman, "Language as an Aid and Barrier to Involvement in the National System," in Rubin & Jernudd, Can Language be Planned (Hawaii Univ. Press 1971).

13/ Peaslee, Constitutions of Nations (3 Vols. 1950).

14/ The text is a controversial summary statement of an even more polemical and most extensive literature. It is reviewed in Engle, The Use of the Vernacular Languages in Education: Revisited, (A literature review prepared for the Ford Foundation, Office of Mexico, Central America and the Caribbean, May 1973.) See also L. Coombs, "A Summary of Pertinent Research in Bilingual Education" in Univ. of Alaska, Rep. of Conference on Bilingual-Bicultural Education for Alaska Native Youth (1969).

15/ Carter, Mexican Americans in School: A History of Educational Neglect (Princeton 1970), p. 144.

16/ Berry, The Education of American Indians, A Survey of the Literature, prepared for the Sen. Special Subcommittee on Indian Education of the Committee on Labor and Public Welfare, 91st Cong., 1st Sess. 18-25 (1969).

17/ Ibid at 31.

18/ For an example of English-speaking parents petitioning for education in French, see Lambert and Tucker, Bilingual Education of Children, The St. Lambert Experiment (Rowley, Mass., Newbury House 1972).

19/ 2 A. Faust, The German Element in the United States, 203 (1969).

20/ For example, Missouri in 1817; Illinois in 1825; Michigan in 1835; and Iowa in 1841. H. Kloss, The Bilingual Tradition in the United States (1970), p. 200.

21/ 2 Faust, op. cit. supra, pp. 151-152. It should be noted that the Germans were practically the sole immigrants of any significant number during the first half of the nineteenth century so that to focus on their experience in this early period is appropriate.

22/ L. Jorgenson, The Founding of Public Education in Wisconsin (1956), p. 146.

23/ J. Fishman, Language Loyalty in the United States (1966), p. 234.

24/ Leibowitz, "English Literacy : Legal Sanction for Discrimination," 45 Notre Dame Lawyer 7, (1969), p. 35.

25/ N. McCluskey, Catholic Education in America (1964), p. 15.

26/ J. Hawgood, The Tragedy of German-America (1940), p. 39.

27/ Bascom, "The Bennett Law," 1 Educational Review 48 (1891).

28/ D. Reilly, The School Controversy (1891-1893), (1943), p. 57.

29/ Kloss, op. cit. supra, note 20, p. 153. E.g., New York, Ohio, Illinois, Wisconsin, Nebraska, Kansas, and in 1890 the newly established states of North and South Dakota.

30/ Kellogg, "The Bennett Law in Wisconsin," 2 The Wisconsin Magazine of History 19 (1918).

31/ Beale, "A History of Freedom of Teaching in American Schools," in Amer. Hist. Ass'n. Com'n. on Social Studies, Rep. (1941), pp. 208-209.

32/ D. Kucera, Church-State Relationships in Education in Illinois (1955), p. 114.

33/ Reilly, op. cit. supra, p. 56, at note 28.

34/ Kucera, op. cit. supra, p. 114, at note 32.

35/ Id. at 116.

36/ Ibid.

37/ Id. at 117.

38/ Kloss, op. cit. supra, at note 20, p. 157.

39/ Ibid.

40/ Rider, "Americanization" in 14 Amer. Pol. Sci. Rev. 110 (1920); Hartman, The Movement to Americanize the Immigrant (New York 1948).

41/ Flanders, Legislative Control of the Elementary Curriculum (New York 1925), pp. 18-19. A bill was introduced in the U.S. Sen. which would have required English as the "language of instruction in all schools, public and private." Sec. 10 of Sen. Bill 1017 introduced May 28, 1919.

42/ Kucera, op. cit. supra., p. 161, at note 32.

43/ Some twenty-two state legislatures specifically singled out German and prohibited its instruction. Zeydel, "The Teaching of German in the United States from Colonial Times to the Present," in Modern Language Association, Reports of Surveys and Studies in the Teaching of Modern Languages 361 (Nov. 1961). See also E. Hartmann, The Movement to Americanize the Immigrant 237-53 (1948).

44/ J. Flanders, Legislative Control of the Elementary Curriculum (1925), p. 29.

45/ 108 Ohio Laws 614 (June 5, 1919).

46/ Bohning v. Ohio and Pohl v. Ohio, 262 U.S. 404 (1929). Similar legislation prohibiting teaching in foreign languages was passed in 1919 by 14 other states: Alabama, Arkansas, Colorado, Delaware, Illinois, Idaho, Iowa, Kansas, Michigan, Minnesota, Nebraska, Nevada, New Hampshire, Oklahoma, and Oregon. Hartmann, The Movement to Americanize the Immigrant (New York 1948), p. 252.

47/ 262 U.S. 390 (1923).

48/ See also Bartels v. Iowa, Bohning v. Ohio, Pohl v. Ohio and Nebraska District of Evangelical Lutheran Synod of Missouri and Other States v. McKelvie, 262 U.S. 404 (1923). In Farrington, Governor of Hawaii v. Tokushige, 273 U.S. 284 (1927), the Supreme Court voided the attempted restriction on the operation of the private Japanese foreign language schools. The issue arose again during World War II.

> "...The School Act and the measures adopted thereunder go far beyond mere regulation of privately supported schools... They give affirmative direction...Enforcement of the Act would probably destroy most if not all of them...The Japanese parent has the right to direct the education of his own child without unreasonable restriction; the Constitution protects him as well as those who speak another tongue."

Stainback, Gov. of Hawaii v. Mo Hock Le Po, 336 U.S. 368 (1949).

49/ Zeydel, "The Teaching of German in the United States from Colonial Times to the Present," in Modern Language Association, Reports of Surveys and Studies in the Teaching of Modern Languages (Nov. 1961), p. 361.

50/ Ibid, p. 368.

51/ A review of United States language school policy in the territories and states with respect to American Indians, Mexican-Americans, Japanese-Americans, German-Americans, and Puerto Ricans is found in Leibowitz, Educational Policy and Political Acceptance: The Imposition of English as the Language of Instruction in American Schools (Center for Applied Linguistics, 1971). For an even more detailed examination see E. Adams, American Indian Education (1946); Sen. Special Subcommittee on Indian Education of the Committee on Labor and Public Welfare, Indian Education: A National Tragedy--A National Challenge, 91st Cong., 1st Sess. (1969) (Hereinafter cited as Indian Education); Y. Ichihashi, Japanese in the United States (1932); R. Daniells, The Politics of Prejudice: The Anti-Japanese Movement in California and the Struggle for Japanese Exclusion (1969); J. Osuna, A History of Education in Puerto Rico (1949); P. Cebollero, A School Language Policy for Puerto Rico (1945); H. Manuels, Spanish-Speaking Children of the Southwest (1965); and U. S. Commission on Civil Rights, Mexican American Education Study, 6 Vols. (1971).

52/ Indian Education, p. 148, at note 51.

53/ Supt. of Indian Schools, Sixth Annual Report 10 (1887).

54/ A. Fletcher, Indian Education and Civilization (1888), p. 168.

55/ Ibid at p. 170.

56/ Indian Education, pp. 150-151; Blackfeet et al. Nation v. U.S., 81 Ct. Cls. 101, 115, 140 (1935).

57/ D. McNickle, The Indian Tribes of the United States: Ethnic and Cultural Survival (1962), pp. 48-49.

58/ Forbes, "Native Americans of California and Nevada (1968)," in Sen. Hearings before the Subcommittee on Indian Education of the Committee on Labor and Public Welfare, 91st Cong., 1st Sess., 75-76 (1969).

59/ Supt. of Indian Schools, Ann. Rep. 8 (1898).

60/ Quick Bear v. Leupp, 210 U.S. 50 (1908). Because of the emphasis in the text on bilingual versus exclusively English schools, the mission schools may appear to the reader to have been reasonably successful. Such was far from the case. "The net results of almost a hundred years of effort and the expenditure of hundreds of thousands of dollars for Indian education were a small number of poorly attended mission schools, a suspicious and disillusioned Indian population, and a few hundred products of missionary education who, for the most part, had either returned to the blanket or were living as misfits among the Indian or white population." Quoted in Berry, op. cit supra at note 16, page 15. It should be noted that the drop-out rate in the mission schools today is far higher than that found in either the public schools or the BIA-sponsored schools.

61/ Compared to 10 million European immigrants in the same period.

62/ Ichihashi, op. cit. supra, pp. 230-231, at note 51.

63/ The most notorious act in this regard was the resolution of the San Francisco Board of Education, passed on Oct.4, 1906, directing Oriental children to be sent to a special oriental school. Ibid, at pp. 236-242.

64/ L.Mears, Resident Orientals on the American Pacific Coast (1927), pp. 195-209, 234, 323, 361.

65/ Takao Ozawa v. U. S., 260 U.S. 178 (1922); Yamashita v. Hinkle, 260 U.S. 199 (1922).

66/ The background of the law is explicated in some detail in R. Daniels, The Politics of Prejudice: The Anti-Japanese Movement in California and the Struggle for Japanese Exclusion (1960), pp. 46-64. Following its adoption in California, similar laws were passed in Arizona, Idaho, Kansas, Louisiana, Montana, New Mexico and Oregon. Similar prohibitions on aliens who have not declared their intention of becoming citizens were passed in Minnesota, Missouri, Montana and Washington. The latter also effectively precluded Japanese ownership of land. These laws were declared constitutional by the Supreme Court. Terrace v. Thompson, 263 U.S. 197 (1923); Webb v. O'Brien, 263 U.S. 313 (1923); Frich v. Webb, 263 U.S. 326 (1923); Cockrill v. California, 268 U.S. 258 (1924). Konvitz, The Alien and Asiatic in American Law (1946), pp. 157-170.

67/ House Select Committee Investigating National Defense Migration Pursuant to H. Res. 113, National Defense Migration, Fourth Interim Report, 77th Cong., 2nd Sess. 87 et. seq. (1942). The internment was upheld as constitutional in one of the low points in the history of the Supreme Court, Koematsu v. United States, 323 U.S. 214 (1944). See also Hirabayashi v. United States, 320 U.S. 81 (1943) holding valid a West Coast curfew on Japanese-Americans.

68/ The Hawaiian census for 1900, three years after the formal acquisition of Hawaii by the United States, counted 61,111 Japanese in the Islands out of a total population of 154,001, or 39.7 percent of the total. This made them by far the largest ethnic group in the Hawaiian Islands: almost double the native Hawaiian groups and more than double the Chinese and Portuguese populations. The Caucasian population was less than 10,000. Y. Ichihashi, op. cit. supra. p. 27, 32 at note 51.

69/ A. Lind, An Island Community (1968), p. 271.

70/ R. Littler, The Governance of Hawaii (1929), p. 69.

71/ Act 231 (Sess. Laws 1925).

72/ Governor of Hawaii to the Secretary of the Interior, Ann. Rep. 5 (1922). (Hereinafter cited as Ann. Rep. and date).

73/ Between 1885-1900, 70,000 Japanese contract laborers came to Hawaii. From 1901-1907 another 11,000 Japanese came to the Islands. U.S. Dept. of Interior, A Survey of Education in Hawaii Made Under the Direction of the Commission of Education 108-109 (Bulletin No. 16 1920). (Hereinafter "Survey of Education").

74/ Id. at 112, 114.

75/ The basic Organic Act passed for Hawaii in 1900 required English in both the legal and educational systems. Act of April 30, 1900, Ch. 339, 31 Stat. 141.

76/ Most of the schools had either two- or three-hour sessions, and hour or an hour and one-half prior to the opening of the public schools and the same period of time after the close of the public school day. In addition, many of the Japanese children attended their schools on Saturday and during the summer, when public schools were on vacation. Survey of Education, p. 114, at note 73.

77/ The Act followed the recommendations of a special survey of education commissioned the previous year by the Governor of Hawaii, a Federal appointee, in order to limit the operation of the foreign language schools. Ann. Rep. (1920), p. 7. The survey subjected the private foreign language schools to particularly careful scrutiny (the analysis of the content of the Japanese language school textbooks alone composed a 24-page appendix to the report) and recommended their abolition unless specifically established in the future by the Territorial Department of Education. The Survey Commission argued against the foreign language schools on three grounds: (1) the adverse effect on the health of the children as a result of the long day, (2) the adverse effect on progress in the public schools, and (3) the influence on loyalty to America because of the retention of Japanese culture, ritual, and in some cases worship of the Emperor.

78/ Act 30, [1920] Laws of the Terr. of Hawaii Spec. Sess. 30, as amended, Act 171, [1923] Laws of the Terr. of Hawaii Reg. Sess. 204, as further amended, Act 152 [1925] Laws of the Terr. of Hawaii Reg. Sess. 178.

79/ Ann. Rep. (1923), pp. 8-9.

80/ Survey of Education, p. 38, at note 73.

81/ Tokushige v. Farrington, Gov. of Hawaii, 11 F.2d 710 (C.A. 9 1926); Farrington, Gov. of Hawaii v. Tokushige, 273 U.S. 284 (1927).

82/ Hearing Before the House Committee on Immigration and Naturalization, 66th Cong., 2nd Sess., pts. 1-4 at 1049 (1920). The numbers may be inflated. The Japanese Association reported 40 in California in 1920 which obviously would put the total number substantially less than in the text.

83/ R. Bell, Public School Education of Second-Generation Japanese in California (1935); H. Kitano, Japanese Americans: The Evolution of a Subculture (1969).

84/ State Board of Control of California, California and the Oriental (1920), pp. 214-215.

85/ Opinion of Attorney General of California rendered to Hon. William Cooper, Supt. of Public Instruction (May 2, 1927). The schools then grew in numbers, increasing in California to 248 in 1940 with 455 teachers, 17,834 students, and a yearly expenditure of $397,000. Oregon had 22 schools, Washington 21, and there were a few others scattered throughout the country. Hearings Before the Select Committee Investigating National Defense Migration Pursuant to H.R.113, 77th Cong., 2nd Sess. at 11086, 11393 (1942). (Hereinafter cited as Defense Migration)

86/ Testimony of Robert H. Fouke and H. L. Strobel, Defense Migration, at 11071 and 11091 at note 85.

87/ Testimony of Mike J. Masaoka, National Defense Migration, pp. 11145, 11222 and 11223 at note 85.

88/ National Defense Migration, pp. 227-245 at note 85. After Pearl Harbor the schools in Hawaii again came under attack. In 1943 the Hawaiian Legislature once more passed an Act regulating the private foreign language schools which was designed to prevent very young children from attending these schools. L. 1943, c. 104, Sec. 1-6; Revised Laws of Hawaii 1945, Sec. 1871-1876. No teaching of a foreign language in any school was permitted prior to the fourth grade or before the child was 15 years old unless a board certified that the child was reasonably well versed in the English language. In addition, prospective teachers were required to take examinations to establish their knowledge of English. Enforcement was by injunction rather than by immediate criminal penalties. Upon being challenged, the law was upset. Mo Hoc Le Po v. Stainback, Gov. of Hawaii, 74 F. 2d 852 (D.C. Hawaii 1947); Stainback, Gov. of Hawaii v. Mo Hock Le Po, 336 U.S. 368 (1949). The law was then softened to provide that no child who had not graduated from second grade in public schools or its equivalent should be taught a foreign language in any school for more than five hours (including assigned homework) in a calendar week. School officials retained the right to visit the schools and the Department of Public Instruction was still required to receive copies of textbooks used in the curriculum. Ch. 31, ser. A-55, Act 72, [1949] Laws of the Terr. of Hawaii Reg.ess. 100.

89/ P.L. 90-247, Jan. 2, 1968; 81 Stat. 783, especially Sec. 704. A history of the Act is given in Leibowitz, op. cit. supra, pp. 105-121 at note 51.

90/ 45 CFR Sec. 8.03 (b) (1); 35 Fed. Reg. 11595.

91/ Lau v. Nichols, _____U.S. ____ (Jan. 21, 1974).

92/ Bromage, "Literacy and the Electorate," 24 Am. Pol. Sci. Rev. 946, 950-55 (1930); R. Billington, The Protestant Crusade: 1800-1860, pp. 412-15 (1938).

93/ The most thorough exploration of southern anti-Negro suffrage legislation is in United States Commission on Civil Rights, Report on Voting (1961). See also the hearings on the subsequent Voting Rights Act of 1965, Hearings on H.R. 6400 Before Subcommittee No. 5 of the House Committee on the Judiciary, 89th Cong., 1st Stss., ser. 2 (1965); Hearings on S. 1564 Before the Senate Comm. on the Judiciary, 89th Cong., 1st Sess. pts. 1 & 2 (1965).

94/ The Mississippi Constitution in 1890 permitted reading and writing or understanding of the Constitution. In 1954 the option was eliminated and the voter required to do both, United States v. Mississippi, 380 U.S. 128, pp. 132-133 (1965).

95/ United States Commission on Civil Rights, Voting in Mississippi (1965), pp. 4-5. The Supreme Court was to note this fact and give it considerable prominence in sustaining Federal legislation. South Carolina v. Katzenbach, 338 U.S. 301, 311 (1965). The lower court opinion in Louisiana v. United States painstakingly examined the legislative history of the Louisiana voting requirements and shows vividly the governmental intent. Louisiana v. United States, 225 F. Supp. 353 (E.D. La. 1964).

96/ D. McGovney, The American Suffrage Medley (1949), pp. 59-60. The relation between southern anti-Negro legislation and state legislation affecting other religious and racial groups is discussed in J. Higham, Strangers in the Land: Patterns of American Nativism 1860-1925 (1955).

97/ See petitioner's brief before the Supreme Court in the case of Jimenez v. Naff, 400 U.S. 986 (1970), vacating Mexican-American Federation-Washington State v. Naff, 299 F. Supp. 587 (E.D. Wash. 1969).

98/ Oakland Morning Times, June 2, 1892, at 4.

99/ Sacramento Daily Record Union, Jan. 20, 1891, at 5.

100/ San Jose Daily Herald, Oct. 17, 1892, at 2.

101/ New York Times, Nov. 7, 1921, at p. 14, Col. 2.

102/ The Supreme Court noted that there was "some evidence suggesting that prejudice played a prominent role in the enactment of the requirement." Katzenbach v. Morgan, 384 U.S. 641, 654 (1966).

103/ New York Times, July 1, 1915, at p. 5, Col. 2.

104/ New York Times, Aug. 25, 1915, at 5, Col. 2 (emphasis added). See also the comments by Robert Wagner, Judge Clearwater, and others reported in New York Times, Aug. 26, 1915, at 5, Col. 1. The propposal was defeated in 1915 by a vote of 77 to 67, New York Times, Aug. 27, 1915, at 5, Col. 3, but was resurrected by a Republican legislature in 1921. See New York Times, Oct. 23, 1921, § 7, at 2, Col. 1. The amendment was subsequently accepted. New York Times, Nov. 10, 1921, at 1, Col 1. See also New York Times, Jan. 17, 1922, at 4, Col. 6.

105/ In Wyoming there is evidence that the group to be controlled was the Finnish coal miners. Rassmussen v. Baker, 7 Wyo. 117, 50, p. 819 (1897). And in Alaska the test sought to restrict Indian suffrage:

> Just a few words about the Indian question....You are interested to just this extent; if the people in Alaska are not careful the Indian of Alaska will be running your Territory, as they are running some of the communities in Southeastern Alaska today. Sitka is run by an Indian council. Wrangell also, but there they have a population of 150 whites and 225 Indians. Most of them are so illiterate that they cannot even read the ballot that they vote, and I wonder if you will believe it, but the majority of their voting is done by block voting. They have a stencil cut, shich just fits the ballot, and all they have to do si to fix the holes in the stencil over the proper place on the ballot and made a mark in the place provided. Of course, all the Indians are not of this type, some are very highly educated, and graduates of Chiwawa Carlisle Universities, and they are perfectly able to read their ballots but there is a large percentate of these Indians of the older generation who neigher read nor write and who have not the slightest conception of what they are doing...
>
> I am for a fair illiteracy test that will prevent this blick voting in Southeastern Alaska, and am a supporter of the White Bill which was introduced into Congress. Mr. Sutherland objected to this bill but he realized that his only salvation for reelection lies in the Indian votes.
> The Seward Gateway, Oct. 19, 1926, at 1, Cols. 2 & 3.

106/ The earliest Supreme Court commentary on these English literacy tests was in Williams v. Mississippi, 170 U.S. 213 (1898) where the Court in dicta upheld the Mississippi literacy requirement holding only that administration of the Constitutional requirement did not discriminate. For an early state case see Stone v. Smith, 159 Mass. 413, 34, N.E. 521 (Mass. Sup. Ct. 1893).

107/ Davis v. Schnell, 81 F. Supp. 872; affirmed 336 U.S. 933 (1949). This was the Court's subsequent interpretation of the Davis v. Schnell affirmance in Lassiter v. Northhampton Election Board, 360 U.S. 45 (1959). See also United States v. Mississippi, 380 U.S. 128 (1965) reversing 229 F. Supp. 925 (S.D. Miss. 1964) and Louisiana v. United States, 380 U.S. 145 (1965) affirming 225 F. Supp. 353 (E.D. La. 1964).

The most thorough explcration of Southern anti-Negro suffrage legislation was in the United States Commission on Civil Rights Report, Voting (1961). See also House of Rep., Voting Rights, Hearings Before Subcommittee No. 5 of the Committee on the Judiciary on H.R. 6400 (89th Cong., 1st Sess., 1965); U.S. Sen., Voting Rights, Hearings Before the Committee on the Judiciary on S. 1564 (89th Cong., 1st Sess., 1965).

108/ Lassiter v. Northhampton Election Board, 360 U.S. 45, 53-54 (1959).

109/ In South Carolina v. Katzenbach, 383 U.S. 301 (1966), the Supreme Court upheld the key portions of the Voting Rights Act of 1965, permitting the suspension of literacy tests where past performance indicated discriminatory administration of the test.

110/ South Carolina v. Katzenbach, 383 U.S. 301, 337 (1966).

111/ Alaska, three counties in Arizona, and one county in Hawaii and Idaho were covered by the Act. Consent judgments (agreed to by the Attorney General) excluding these jurisdictions were obtained under 4(a) of the Act on the grounds that the tests had not been used to discriminate on the basis of race or color during the five years preceding the filing of the action. The Navajo tribe objected without avail to the Attorney General's consent. In Alabama, Georgia, Louisiana, Mississippi, South Carolina, Virginia, and 40 counties in North Carolina the Act went into effect and the tests were suspended. The Attorney General refused a consent judgment to permit North Carolina to remove itself from coverage of the Act. United States Commission on Civil Rights, Political Participation (1968), p. 11.

112/ Katzenbach v. Morgan, 384 U.S. 641 (1966). See also United States v. Monroe County Board of Elections, 248 F. Supp. 316 (W.D.N.Y. 1965).

113/ Castro v. State of California, 466 P.2d 244 (Calif. Sup. Ct. 1970).

114/ Cardona v. Power, 384 U.S. 672 (1966). See also Camacho v. Rogers, 199 F.Supp. 155 (S.D.N.Y. 1961); Camacho v. Doe, 7 N.Y.2d 762, 194 N.Y.S.2d 33 (1959). In the Cardona case the appellant was literate in Spanish, but not in English, and challenged the New York State English literacy test as it applied to her as violative of due process and equal protection. The Supreme Court could not determine from the record before it whether the appellant had completed the sixth grade in Puerto Rico and, thus, was covered by Section 4(e) and the Morgan decision. The Court, therefore, remanded the case to see if this was the situation, commenting, in argument, whether, after the enactment of 4(e), New York would wish to continue its English literacy requirement. The New York State Constitutional Convention that was subsequently held did suggest eliminating the requirement. Two other states, Hawaii and Maine, have repealed the tests and in many other states the law was not enforced even prior to the 1970 law. Voting Rights Act Extension, U.S. Cong., Hearings Before Subcommittee No. 5 of the Committee of the Judiciary (91st Cong., 1st Sess) May 14, 15; June 19, 26; July 1, 1969. Recently a number of groups, the American Civil Liberties Union, the Civil Rights Commission, and a recent Presidential Commission, have urged the elimination of literacy tests as a condition of the suffrage.

In Gaston County, North Carolina, v. U.S., 395 U.S. 285 (1969), the Supreme Court made a link between educational discrimination and political discrimination which is important to the thesis of this essay, in addition to indicating the constitutional weakness of the English literacy test as a condition of voting. In that case the court held the test discriminatory because of past inequalities in the school system.

115/ Sustained in Oregon v. Mitchell, 400 U.S. 112 (1970).

116/ Jimenez v. Naff, 400 U.S. 986 (1970), vacating Mexican-American Federation-Washington State v. Naff, 299 F.Supp. 587 (E.D. Wash. 1969).

117/ 2 Stat. L., 153, enacted April 14, 1802.

118/ Petition of Katz, 21 F. 2d 867 (E.D. Mich. 1927). But see the exact opposite reasoning applied in In re Rodriguez, 81 F. Supp. 337 (W.D. Tex. 1897).

119/ Treaty with French Republic, April 30, 1803, Art. III, 8 Stat. 202 (1846), T. S. No. 86 (effective October 21, 1803).

120/ Treaty of Amity, Settlement and Limits, with his Catholic Majesty, Feb. 22, 1819, Art. VI, 8 Stat. 256 (1846), T. S. No. 327, effective Feb. 22, 1821).

121/ Treaty of Peace, Friendship, Limits, and Settlement with the Republic of Mexico, Feb. 2, 1848, Art. VIII, 9 Stat. 929 (1851) T. S. No. 206 (effective July 4, 1848).

122/ McGovney, American Suffrage Medley (1949).

123/ House Report, 59th Cong., 1st Sess., Document No. 46, p. 11.

124/ B. Solomon, Ancestors and Immigrants (1956), pp. 82-175. By the time of the Act's passage, increased literacy in Europe made it ineffective as a general exclusionary device. When this became clear in 1920, percentage quotas were rapidly enacted. See J. Higham, Strangers in the Land: Patterns of American Nativism: 1860:1925: (1955), pp. 308-11.

125/ Act of Feb. 5, 1917, Ch. 29, Sec. 3; 39 Stat. 875.

126/ 64 Stat. 1018, enacted Sept. 23, 1950, Ch. 1024; 8 U.S.C.A. 1423(1).

127/ Sen. Rep. No. 1515, 81st Cong., 2d Sess. (1950), p. 206.

128/ Sen. Rpt. No. 1137, 82nd Cong., 2d Sess. (1952), 98 Cong. Rec. 14183, (1950) NOTE: "Immigration and Naturalization," 66 Harv. L. Rev., 699, 797 (1953).

129/ 8 C.F.R. 312.1.

130/ 8 U.S.C.A. 1423(2).

131/ In re Swenson, 61 F. Supp. 376 (D.C. Ore. 1945); Martinez v. Mitchell (C.A. 70-2767-cc) (D.C. Calif. C.D. March 16, 1971).

132/ United States v. Bergmann, 47 F. Supp. 765 (S.D. Calif. 1942); Schneider v. Rusk, 377 U.S. 193 (1964) limited the distinction between naturalized and native-born citizens with respect to expatriation but as yet no such limitation has been suggested with respect to the original grant of citizenship.

133/ Trujillo-Hernandez v. Farrell (No. 73-1845) and Trujillo-Hernandez v. United States (No. 73-3005) both now pending before the United States Court of Appeals for the Fifth Circuit.

134/ For a complete listing of these statutes at present in the United States see Appendix to Leibowitz, op cit. supra. at note 24, p. 35.

135/ Vagts, The Corporate Alien: Definitional Questions in Federal Restraints on Foreign Enterprise, 74 Harv. L. Rev. 1489, 1493 (1961).

136/ M. Konvitz, The Alien and Asiatic in American Law (1946), pp. 190-207.

137/ Clarke v. Deckenbach, 274 U.S. 392 (1927).

138/ NOTE, Constitutionality of Restrictions on the Alien's Right to Work, 57 Colum. L. Rev. 1012 (1957); and National Power to Control State Discrimination Against Foreign Goods and Persons: A Study in Federalism, 12 Stan. L. Rev. 355, 364-69 (1960).

139/ Takahashi v. Fish and Game Commission, 334 U.S. 410, 418-419 (1948).

140/ Sugarman v. Dougall, 37 L. Ed. 2d 853 (June 25, 1973).

141/ In Re Griffiths, 37 L.Ed. 2d 910 (June 25, 1973). But see Espinoza v. Farah Manufacturing Co., Inc., _____ U.S. ____ (Nov. 19,1973

142/ Although, as we have seen, the courts have generally been hostile to statutory impositions of English, this has not been true in common law situations where the courts, in the few decisions that have discussed the issue, usually have reinforced the practical need for a knowledge of English. Thus, the general rule is that illiteracy will not rebut the presumption that a bank depositor has knowledge of the rules printed in his passbook, and posting railroad signs in English has been held to fulfill the notice requirements imposed on a railroad company by state statute--even though the statute did not mention language and the injured plaintiff could not read English.

143/ A more recent example of the pressure exerted by the combined legal and practical consequences of English literacy was the draft deferment examinations during the Viet Nam War, which were given only in English. Puerto Rico protested this and an accommodation was made. Exceptions for medical and bar examinations in Puerto Rico have also been made. Leibowitz, op. cit. supra. at note 24, p. 40.

144/ 271 U.S. 500 (1926).

145/ 401 U.S. 424 (1971).

146/ Equal Employment Opportunity Commission, Press Release, "EEOC Files Four Job Discrimination Suits Against Employers and Unions," Nov. 8, 1973.

147/ The most obvious instance of this was school segregation under the cover of linguistic need. U. S. Comm. on Civil Rights, Ethnic Isolation of Mexican-Americans in the Public Schools of the Southwest (Mex.-Am. Education Study Rep. 1 1970); Gonzalez v. Sheely, 96 F. Supp. 1004 (D. Ariz. 1951); Mendez v. Westminster School District, 64 F. Supp. 544 (S.D. Calif. 1946) aff'd. Westminster School District v. Mendez 161 F. 2d 774 (9th Cir. 1947)